



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB5676

by Rep. Elaine Nekritz

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/104-15

from Ch. 38, par. 104-15

Amends the Code of Criminal Procedure of 1963. Allows the court to order the videotaping of a fitness to stand trial interview of a defendant conducted by a court appointed qualified expert or an expert retained by the prosecution or the defense (rather than interviews conducted by a person retained or appointed by the State or the defense shall be videotaped unless impractical). The expert shall inform the defendant that the interview will be videotaped and explain how the videotape shall be used. Prior to and during the interview, the expert shall assess whether the videotaping of the interview is likely to cause or is causing, mental or physical harm to the defendant or others. If the expert determines the videotaping of the interview is likely to cause mental or physical harm to the defendant or others, the videotaping shall not be conducted. If the expert determines during the interview that the videotaping is causing mental or physical harm to the defendant or others, the videotaping shall cease. Provides the fact that none or only part of the interview is videotaped shall not preclude the expert from forming an opinion, submitting a report, or testifying, on the issue of the defendant's fitness to stand trial. A copy of the videotape shall be retained by the party who requested the interview be videotaped. Deletes that in the event the interview is not videotaped, the court may only consider the lack of compliance in according the weight and not the admissibility of the expert testimony. Deletes that an examiner may use these materials as part of his or her diagnosis and explanation but shall not otherwise disclose the contents, including at a hearing before the court, except as otherwise provided in the Code. Effective immediately.

LRB099 19235 SLF 43627 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is  
5 amended by changing Section 104-15 as follows:

6 (725 ILCS 5/104-15) (from Ch. 38, par. 104-15)  
7 Sec. 104-15. Report.

8 (a) The person or persons conducting an examination of the  
9 defendant, pursuant to paragraph (a) or (b) of Section 104-13  
10 shall submit a written report to the court, the State, and the  
11 defense within 30 days of the date of the evaluation ~~order~~. The  
12 report shall include:

13 (1) A diagnosis and an explanation as to how it was  
14 reached and the facts upon which it is based;

15 (2) A description of the defendant's mental or physical  
16 disability, if any; its severity; and an opinion as to  
17 whether and to what extent it impairs the defendant's  
18 ability to understand the nature and purpose of the  
19 proceedings against him or to assist in his defense, or  
20 both.

21 (b) If the report indicates that the defendant is not fit  
22 to stand trial or to plead because of a disability, the report  
23 shall include an opinion as to the likelihood of the defendant

1 attaining fitness within one year if provided with a course of  
2 treatment. If the person or persons preparing the report are  
3 unable to form such an opinion, the report shall state the  
4 reasons therefor. The report may include a general description  
5 of the type of treatment needed and of the least physically  
6 restrictive form of treatment therapeutically appropriate.

7 (c) The report shall indicate what information, if any,  
8 contained therein may be harmful to the mental condition of the  
9 defendant if made known to him.

10 (d) The court may order that a fitness to stand trial  
11 interview of a defendant conducted by a court appointed  
12 qualified expert or an expert retained by the prosecution or  
13 the defense be videotaped. The videotaping shall be arranged  
14 and managed by the county or the private defense attorney for  
15 the defendant. Prior to the interview, the expert conducting  
16 the interview may inform the defendant that the interview will  
17 be videotaped and explain how the videotape may be used. Prior  
18 to conducting the interview and during the interview, the  
19 expert, as a licensed clinician, shall assess whether the  
20 videotaping of the interview is likely to cause or is causing,  
21 mental or physical harm to the defendant or others. If the  
22 expert determines the videotaping of the interview is likely to  
23 cause mental or physical harm to the defendant or others, the  
24 videotaping shall not be conducted. If the expert determines  
25 during the interview that the videotaping is causing mental or  
26 physical harm to the defendant or others, the videotaping shall

1 cease. The fact that none or only part of the interview is  
2 videotaped shall not preclude the expert conducting the  
3 interview from forming an opinion, submitting a report, or  
4 testifying, on the issue of the defendant's fitness to stand  
5 trial. A copy of the videotape shall be retained by the county  
6 or the party who requested the interview be videotaped. In  
7 ~~addition to the report, a person retained or appointed by the~~  
8 ~~State or the defense to conduct an examination shall, upon~~  
9 ~~written request, make his or her notes, other evaluations~~  
10 ~~reviewed or relied upon by the testifying witness, and any~~  
11 ~~videotaped interviews available to another examiner of the~~  
12 ~~defendant. All forensic interviews conducted by a person~~  
13 ~~retained or appointed by the State or the defense shall be~~  
14 ~~videotaped unless doing so would be impractical. In the event~~  
15 ~~that the interview is not videotaped, the examiner may still~~  
16 ~~testify as to the person's fitness and the court may only~~  
17 ~~consider the lack of compliance in according the weight and not~~  
18 ~~the admissibility of the expert testimony. An examiner may use~~  
19 ~~these materials as part of his or her diagnosis and explanation~~  
20 ~~but shall not otherwise disclose the contents, including at a~~  
21 ~~hearing before the court, except as otherwise provided in~~  
22 ~~Section 104-14 of this Code.~~

23 (e) The court may order that the party or counsel  
24 requesting that the interview be videotaped shall make the  
25 videotape as well as the expert's written report, interview  
26 notes, and other relevant documents available to court

1 appointed experts, or other experts retained by the defense or  
2 prosecutor.

3 (Source: P.A. 98-1025, eff. 1-1-15.)

4 Section 99. Effective date. This Act takes effect upon  
5 becoming law.